

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DEMOCRACY NORTH CAROLINA, THE LEAGUE
OF WOMEN VOTERS OF NORTH CAROLINA,
JOHN P. CLARK, LELIA BENTLEY, REGINA
WHITNEY EDWARDS, ROBERT K. PRIDDY II,
WALTER HUTCHINS, and SUSAN SCHAFFER,

Plaintiffs,

v.

THE NORTH CAROLINA STATE BOARD OF
ELECTIONS; DAMON CIRCOSTA, in his
official capacity as CHAIR OF THE
STATE BOARD OF ELECTIONS; STELLA
ANDERSON, in her official capacity
as SECRETARY OF THE STATE BOARD OF
ELECTIONS; STACY EGGERS IV, in his
official capacity as MEMBER OF THE
STATE BOARD OF ELECTIONS; JEFF
CARMON III, in his official capacity
as MEMBER OF THE STATE BOARD OF
ELECTIONS; TOMMY TUCKER, in his
official capacity as MEMBER OF THE
STATE BOARD OF ELECTIONS; and KAREN
BRINSON BELL, in her official
capacity as EXECUTIVE DIRECTOR OF
THE STATE BOARD OF ELECTIONS,

Defendants,

and

PHILIP E. BERGER, in his official
capacity as PRESIDENT PRO TEMPORE OF
THE NORTH CAROLINA SENATE, and
TIMOTHY K. MOORE, in his official
capacity as SPEAKER OF THE NORTH
CAROLINA HOUSE OF REPRESENTATIVES,

*Legislative Defendant-
Intervenors.*

Civil Action

No. 20-cv-00457

UNOPPOSED MOTION TO
DISMISS COUNT THREE OF
PLAINTIFFS' FOURTH AMENDED
COMPLAINT AND BRIEF
IN SUPPORT

Pursuant to Federal Rule of Civil Procedure 12(b)(1), Defendant-Intervenors Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives ("Legislative Defendants"), together with the State Board Defendants, move to dismiss Count Three of the operative Fourth Amendment Complaint. Plaintiffs do not oppose this Motion.

Count Three alleges a claim for declaratory and injunctive relief under Section 208 of the Voting Rights Act, 52 U.S.C. § 10508. See Fourth Am. Compl., Doc. 208, ¶¶ 55-62 (July 8, 2021). As the Court noted in its recent opinion, "only Plaintiff Hutchins' standing is relevant as to the Section 208 claim." Mem. Op. & Order, Doc. 224, at 34 n.8 (Mar. 10, 2022). With Plaintiff Hutchins' passing, see Rule 25 Statement Noting Death, Doc. 225 (Mar. 15, 2022), the Section 208 claim is now moot and Count Three must be dismissed. See, e.g., *Wicomico Nursing Home v. Padilla*, 910 F.3d 739, 749 (4th Cir. 2018).

Plaintiffs' position: Plaintiffs do not oppose this motion to dismiss. Counsel for Plaintiff further notes that they understand their attorney-client relationship with Mr. Hutchins terminated upon his passing and thus they are unable to voluntarily dismiss his claim. See *Coppinger v. Schantag*, No. DKC 2005-2380, 2006 U.S. Dist. LEXIS 222 (D. Md. Jan 5. 2006). Counsel for Plaintiff also

understand that Mr. Hutchins' claim for permanent injunctive relief pursuant to Section 208 of the Voting Rights Act extinguished upon his passing, and thus is not appropriate for substitution by his estate or executor. See N.C.G.S. § 28A-18-1(b)(3) (stating rights of action do not survive where the relief sought could not be enjoyed, or granting it would be nugatory after death); *Brown v. Town of Cary*, 706 F.3d 294, 299-300 (4th Cir. 2013) (holding where a federal statute does not provide for survival of claims, courts consult the law of the forum state to determine whether the claim survives).

Legislative and State Board Defendants therefore request that the Court dismiss Count Three of the Fourth Amended Complaint.

Dated: March 21, 2022

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d)(1), the undersigned counsel hereby certifies that the foregoing Motion and Brief in Support, including body, headings, and footnotes, contains 351 words as measured by Microsoft Word.

/s/ Nicole J. Moss
Nicole J. Moss

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on the 21st day of March, 2022, she electronically filed the foregoing Motion and Brief in Support with the Clerk of the Court using the CM/ECF system, which will send notification of such to all counsel of record in this matter.

/s/ Nicole J. Moss
Nicole J. Moss